IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 7008 of 2007(H)

AS.10/2003 of SUB COURT,KOTTARAKKARA
OS.538/1996 of MUNSIFF COURT, KOTTARAKKARA

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PETITIONER:

P.VAMADEVAN, SUNDARA BHAVANAM,
NEELESWARAM P.O., NEDUVATHUR, KOTTARAKKARA.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

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1. VASUDEVAN, SON OF SANKARAN,
CHAITHANYA, NEDUVATHUR, KOTTARAKKARA.

2. SIVANKUTTY, SIVA VILASAM VEEDU,
NEAR NADUVATHUR PANCHAYAT OFFICE,
NADUVATHUR, KOTTARAKKARA.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. BALACHANDRAN, J.

W.P.(C) No. 7008 of 2007

Dated this the 19th day of March, 2007.

J U D G M E N T

Petitioner is the 2nd appellant in A.S. 10/2003 on the file of the Sub Court, Kottarakkara. The said appeal is one filed against the decree in O.S.538/1996 passed by the Munsiff's Court, Kottarakara granting reliefs in favour of the 1st respondent/ plaintiff. It is submitted that stay of execution of the decree was not sought for initially, as there was no necessity, but that when the plaintiff/1st respondent moved Ext.P2 execution petition in the court below, petition for stay was moved in A.S 10/2003 but that was dismissed vide Ext.P3 order . The relief sought for in this writ petition is for an order quashing Ext.P3 order, refusing to grant stay of execution proceedings.

2. On going through Ext.P2 execution petition, it is seen that the allegation of the 1st respondent/plaintiff is that the defendants in the suit who are bound by the decree has in violation of the decree, trespassed into a portion of the property to a width of 2 meters from the north-east portion to the south-east portion of the property and formed a road. If

such high-handed acts were done by the petitioner and others who have preferred A.S. 10/2003, that is a matter for enquiry and the appellate court was justified in dismissing the application for stay refusing to interfere in the proceedings initiated before the execution court.

3 In any event, if the execution court finds in favour of the 1st respondent/plaintiff on facts and proceeds with prosecution against the petitioner, the petitioner can at that point of time, if the appeal is not disposed of, move for a stay of implementation of the order implementing punitive action, if any, proposed to be taken against him. The proceedings in execution petition cannot be stayed at this stage.

In the circumstances, the writ petition is dismissed.

(K.P. BALACHANDRAN, JUDGE)

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KURIAN JOSEPH, J.

OP No.

JUDGMENT

13th March, 2006